

SENATE BILL NO. 450

INTRODUCED BY COCCHIARELLA, BRUEGGEMAN, CYR, KEANE, MAHLUM, MATTHEWS, MCNUTT,
ROUSH, F. THOMAS, TROPILA, WILSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO WORKERS' COMPENSATION;
PROVIDING FOR DISCLOSURE AND COMMUNICATION OF HEALTH CARE INFORMATION FOR
WORKERS' COMPENSATION PURPOSES WITHOUT PRIOR NOTICE TO THE INJURED EMPLOYEE;
BARRING ATTORNEY FEES UNDER THE COMMON FUND DOCTRINE; EXCLUDING IMPAIRMENT
RATINGS BASED EXCLUSIVELY ON PAIN; INCREASING THE PERMANENT PARTIAL DISABILITY BENEFIT
MAXIMUM ENTITLEMENT FROM 350 TO 375 WEEKS; AMENDING SECTIONS 39-71-604, 39-71-611,
39-71-612, 39-71-703, AND 50-16-527, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-604, MCA, is amended to read:

"39-71-604. Application for compensation -- disclosure and communication without prior notice of health care information. (1) If a worker is entitled to benefits under this chapter, the worker shall file with the insurer all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as that may be required by the rules of the department without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) A signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, or to the agent of a workers' compensation insurer by the health care provider. The disclosure authorized by this subsection authorizes the physician or other health care provider to disclose or release only information relevant to the claimant's condition. Health care information relevant to the claimant's condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may affect recovery. A release of information related to workers' compensation must be consistent with the provisions of this subsection.

1 Authorization under this section is effective only as long as the claimant is claiming benefits. This subsection
 2 may not be construed to restrict the scope of discovery or disclosure of health care information, as allowed under
 3 the Montana Rules of Civil Procedure, by the workers' compensation court or as otherwise provided by law.

4 (3) A signed claim for workers' compensation or occupational disease benefits or a signed release
 5 authorizes a workers' compensation insurer, as defined in 39-71-116, or the agent of the workers' compensation
 6 insurer to communicate with a physician or other health care provider about relevant health care information,
 7 as authorized in subsection (2), by telephone, letter, electronic communication, in person, or by other means,
 8 about a claim and to receive from the physician or health care provider the information authorized in subsection
 9 (2) without prior notice to the injured employee, to the employee's authorized representative or agent, or in the
 10 case of death, to the employee's personal representative or any person with a right or claim to compensation
 11 for the injury or death.

12 ~~(2)~~(4) If death results from an injury, the parties entitled to compensation or someone in their behalf
 13 shall file a claim with the insurer. The claim must be accompanied with proof of death and proof of relationship,
 14 showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof
 15 as may be required by the department."
 16

17 **Section 2.** Section 39-71-611, MCA, is amended to read:

18 **"39-71-611. Costs and ~~attorneys'~~ attorney fees payable on denial of claim or termination of**
 19 **benefits later found compensable -- barring of attorney fees under common fund and other doctrines.**

20 (1) The insurer shall pay reasonable costs and attorney fees as established by the workers' compensation court
 21 if:

- 22 (a) the insurer denies liability for a claim for compensation or terminates compensation benefits;
 23 (b) the claim is later adjudged compensable by the workers' compensation court; and
 24 (c) in the case of ~~attorneys'~~ attorney fees, the workers' compensation court determines that the insurer's
 25 actions in denying liability or terminating benefits were unreasonable.

26 (2) A finding of unreasonableness against an insurer made under this section does not constitute a
 27 finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

28 ~~(3) Except as provided in subsection (1), attorney~~ ATTORNEY fees may ONLY BE AWARDED UNDER THE
 29 PROVISIONS OF SUBSECTION (1) AND MAY not be awarded under the common fund doctrine or any other action or
 30 doctrine in law or equity."

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2 **Section 3.** Section 39-71-612, MCA, is amended to read:

3 **"39-71-612. Costs and ~~attorneys' attorney~~ fees that may be assessed against insurer by workers'**

4 **compensation judge -- barring of attorney fees under common fund or other doctrines.** (1) If an insurer
5 pays or submits a written offer of payment of compensation under chapter 71 or 72 of this title but controversy
6 relates to the amount of compensation due, the case is brought before the workers' compensation judge for
7 adjudication of the controversy, and the award granted by the judge is greater than the amount paid or offered
8 by the insurer, ~~a reasonable attorney's fee~~ attorney fees and costs as established by the workers' compensation
9 judge if the case has gone to a hearing may be awarded by the judge in addition to the amount of compensation.

10 (2) An award of ~~attorneys' attorney~~ fees under subsection (1) may ~~only~~ be made only if it is determined
11 that the actions of the insurer were unreasonable. Any written offer of payment made 30 days or more before
12 the date of hearing must be considered a valid offer of payment for the purposes of this section.

13 (3) A finding of unreasonableness against an insurer made under this section does not constitute a
14 finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

15 (4) Except as provided in subsection (1) or (2), attorney ATTORNEY fees may ONLY BE AWARDED UNDER
16 THE PROVISIONS OF SUBSECTIONS (1) AND (2) AND MAY not be awarded under the common fund doctrine or any
17 other action or doctrine in law or equity."

18

19 **Section 4.** Section 39-71-703, MCA, is amended to read:

20 **"39-71-703. Compensation for permanent partial disability.** (1) If an injured worker suffers a
21 permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the
22 worker is entitled to a permanent partial disability award if that worker:

23 (a) has an actual wage loss as a result of the injury; and

24 (b) has a permanent impairment rating that:

25 (i) is not based exclusively on complaints of pain;

26 ~~(i)~~(ii) is established by objective medical findings; and

27 ~~(ii)~~(iii) is more than zero as determined by the latest edition of the American medical association Guides
28 to the Evaluation of Permanent Impairment.

29 (2) When a worker receives an impairment rating as the result of a compensable injury and has no
30 actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

1 (3) The Beginning July 1, 2003, the permanent partial disability award must be arrived at by multiplying
2 the percentage arrived at through the calculation provided in subsection (5) by ~~350~~ 375 weeks.

3 (4) A permanent partial disability award granted an injured worker may not exceed a permanent partial
4 disability rating of 100%.

5 (5) The percentage to be used in subsection ~~(3)~~ (4) must be determined by adding all of the following
6 applicable percentages to the impairment rating:

7 (a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40 years
8 of age at the time of injury, 1%;

9 (b) for a worker who has completed less than 12 years of education, 1%; for a worker who has
10 completed 12 years or more of education or who has received a graduate equivalency diploma, 0%;

11 (c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual
12 wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of
13 more than \$2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the
14 difference between the actual wages received at the time of injury and the wages that the worker earns or is
15 qualified to earn after the worker reaches maximum healing.

16 (d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the
17 worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing
18 heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was
19 performing medium labor activity at the time of the injury and after the injury the worker can perform only light
20 or sedentary labor activity, 2%.

21 (6) The weekly benefit rate for permanent partial disability is $66 \frac{2}{3}\%$ of the wages received at the time
22 of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount
23 established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly
24 wage for future fiscal years.

25 (7) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the
26 award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

27 (8) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this
28 section must be calculated based on the wages that the worker earns or would be qualified to earn following the
29 completion of the rehabilitation plan.

30 (9) As used in this section:

1 (a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds
2 frequently;

3 (b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds
4 frequently;

5 (c) "light labor activity" means the ability to lift up to 20 pounds occasionally or up to 10 pounds
6 frequently; and

7 (d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds
8 frequently."
9

10 **Section 5.** Section 50-16-527, MCA, is amended to read:

11 **"50-16-527. Patient authorization -- retention -- effective period -- exception -- communication**
12 **without prior notice for workers' compensation purposes.** (1) A health care provider shall retain each

13 authorization or revocation in conjunction with any health care information from which disclosures are made.

14 (2) Except for authorizations to provide information to third-party health care payors, an authorization
15 may not permit the release of health care information relating to health care that the patient receives more than
16 6 months after the authorization was signed.

17 (3) Health care information disclosed under an authorization is otherwise subject to this part. An
18 authorization becomes invalid after the expiration date contained in the authorization, which may not exceed 30
19 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

20 (4) Notwithstanding subsections (2) and (3), a signed claim for workers' compensation or occupational
21 disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, or to the
22 agent of a workers' compensation insurer by the health care provider. The disclosure authorized by this
23 subsection authorizes the physician or other health care provider to disclose or release only information relevant
24 to the claimant's condition. Health care information relevant to the claimant's condition may include past history
25 of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for
26 which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may
27 affect recovery. A release of information related to workers' compensation must be consistent with the provisions
28 of this subsection. Authorization under this section is effective only as long as the claimant is claiming benefits.
29 This subsection may not be construed to restrict the scope of discovery or disclosure of health care information
30 as allowed under the Montana Rules of Civil Procedure, by the workers' compensation court, or as otherwise

1 provided by law.

2 (5) A signed claim for workers' compensation or occupational disease benefits or a signed release
3 authorizes a workers' compensation insurer, as defined in 39-71-116, or the agent of the workers' compensation
4 insurer to communicate with a physician or other health care provider about relevant health care information,
5 as authorized in subsection (4), by telephone, letter, electronic communication, in person, or by other means,
6 about a claim and to receive from the physician or health care provider the information authorized in subsection
7 (4) without prior notice to the injured employee, to the employee's authorized representative or agent, or in the
8 case of death, to the employee's personal representative or any person with a right or claim to compensation
9 for the injury or death."

10

11 NEW SECTION. Section 6. Effective date -- applicability dates. (1) [This act] is effective on passage
12 and approval.

13 (2) [Sections 2, 3, 4(1), 4(2), and 4(4) through 4(9)] apply to injuries that occur on or after [the effective
14 date of this act].

15 (3) [Section 4(3)] applies to claims for injuries occurring on or after July 1, 2003.

16 (4) [Sections 1 and 5] apply retroactively, within the meaning of 1-2-109, to injuries occurring before [the
17 effective date of this act].

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